



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,997	09/11/2003	Carl E. Linton	32724-703.201	8998

21971 7590 08/05/2008
WILSON SONSINI GOODRICH & ROSATI
650 PAGE MILL ROAD
PALO ALTO, CA 94304-1050

EXAMINER

CHEUNG, VICTOR

ART UNIT	PAPER NUMBER
----------	--------------

3714

MAIL DATE	DELIVERY MODE
-----------	---------------

08/05/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/659,997

Applicant(s)

LINTON, CARL E.

Examiner

VICTOR CHEUNG

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. Applicant's response has been received 03/03/2008.

Claims 1-39 are pending.

Response to Amendment

2. The declaration filed on 03/03/2008 under 37 CFR 1.131 has been considered but is ineffective to overcome the Butler (US Publication 2004/0261796) reference.

The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Butler reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). Applicant allegedly proved prior conception on page 14 of the Arguments, stating that it was "evidenced by the Examiner's own citation of 'CVAC What's New,' and 'CVAC What is CVAC,' both of which are of record and have apparent publication and archival dates of December 1, 2002. Thus according to the Examiner's reasoning, the claimed invention was allegedly evidenced by the aforementioned publications, all of which predate the filing date of Butler." However, as discussed in the previous Office Action (Mail Date 07/13/2007, Page 4) and also Applicant's Remarks (See Page 12), the cited references do not disclose at least a user sensor as claimed in claim 1. Thus proof of conception has not been established prior to the June 30, 2003 date of Butler.

Art Unit: 3700

The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Butler reference to either a constructive reduction to practice or an actual reduction to practice. No evidence of diligence has been submitted.

3. The declaration filed on 03/03/2008 under 37 CFR 1.132 is sufficient to overcome the rejection of claims 1-39 based upon the archived web-pages (See Applicant's remarks page 13).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-39 are rejected under 35 U.S.C. 102(b) based upon a public use or sale of the invention. The issue of the public use or sale of the invention has been raised in the previous Office Action mailed 07/13/2007. See the Requirement for Information statement attached to the end of this Office Action for more information.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the

Art Unit: 3700

subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 6-10, and 15-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Applicant's Admitted Prior Art ("AAPA" as evidenced by "Introducing the CVAC Process", Item #5 of IDS filed 12/10/2003; Applicant's Remarks, 03/03/2008; Reid, W., "Device Enhances Performances for Local Athletes," Item #2 of IDS filed 04/08/2006; "Introducing CVAC", Item #4 of IDS filed 12/10/2003) in view of Butler (US Patent Application Publication 2004/0261796).

Re Claim 1: The AAPA discloses a pressure vessel capable of being opened to receive a user and closed to create a hermetic seal ("Introducing the CVAC Process: What is CVAC", Item #5 of IDS filed 12/10/2003), the pressure vessel comprising an on-board interface capable of enabling a user to control one or more functions of the pressure vessel unit, a pressure transducer capable of monitoring air pressure inside the pressure vessel, a blower capable of removing air from the pressure vessel, and a proportioning valve capable of controlling the amount of air allowed to enter into the pressure vessel (Applicant's Remarks, 03/03/2008, Page 12).

Note that while the references do not specifically include the term "hermetic seal," it is inherent of a pressure vessel that controls pressure to include a hermetic seal; without a hermetic seal, air pressure cannot be controlled.

However, the AAPA does not specifically disclose a user sensor capable of measuring one or more parameters of a user's body condition.

Butler discloses a user sensor capable of measuring one or more parameters of a user's body condition (Paragraphs 111, 123).

Art Unit: 3700

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a user sensor capable of measuring one or more parameters of a user's body condition, thereby providing an operator or operating device with updated details of the user's body condition.

Re Claim 6: The AAPA does not specifically disclose an external controller placed in electrical communication with the system to initiate a session.

Butler discloses electronic controls and external controller placed in electrical communication with the system to initiate sessions (Fig. 7; Paragraphs 114-122).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include an external controller placed in electrical communication with the system to initiate sessions, thereby providing an operator control of the system.

Re Claim 7-9: The AAPA does not specifically disclose the user sensor placed in electrical communication with the external controller, the external controller being capable of monitoring readings from the user sensor to determine whether a measured parameter of a user's body condition is at a level sufficient enough to warrant a selection or modification of a predetermined program regulating cyclic variations in altitude conditioning.

Butler discloses the user sensor placed in electrical communication with the external controller for selection and modification programs based on measured parameters (Paragraphs 111, 123, 129, 114-120).

It would have been obvious to one of ordinary skill in the art to have the user sensor placed in electrical communication with the external controller, the external controller being capable of

Art Unit: 3700

monitoring readings from the user sensor to determine whether a measured parameter of a user's body condition is at a level sufficient enough to warrant a modification of a predetermined program regulating cyclic variations in altitude conditioning, thereby providing conditioning that takes into account user safety and desired goals.

Re Claim 10: Note that claim 10 includes the pressure vessel of claim 1, and additionally a kiosk controller and a master controller.

The AAPA does not specifically disclose a kiosk controller and a master controller.

Butler discloses that a network of local and remote computer systems are coupled to the pressure vessel system (controls, sensors, interface), running programs to control the operation of the vessel, and to store and retrieve information regarding the programs and profiles to be run on the system, as well as information regarding users of the vessel (Paragraphs 118-121).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a kiosk controller and a master controller comprising first and second software programs, and information processing systems for executing the programs, such that the controllers are able to control the pressure vessel system with a series of programs adaptive to various situations and parameters.

Re Claims 15-20: Note that claims 15-20, dependent on claim 10, include limitations also found in claims 6-9, dependent on claim 1, except that claims 15-20 relate to the kiosk controller (instead of an "external controller"). Also with regard to claims 19 and 20, it is claimed that the information processing system, instead of the external controller, is capable of performing the tasks as described in claims 7-9. It is claimed in claim 10 that the information processing system is

Art Unit: 3700

included in the kiosk controller. Claims 6-9 have each been discussed above. It has been discussed in regard to claim 10 that the kiosk controller is coupled to the sensors and measurement devices and controls the operation of the pressure vessel.

Re Claims 21-22: The AAPA does not specifically disclose the master controller located in a separate facility and is capable of storing user data entered into the kiosk controller or on-board interface.

Butler discloses a storage and retrieval system of user data including both local and remote systems, that databases may be local or through the Internet (Paragraphs 120-121).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to store user data entered in a kiosk in a controller located in a separate facility, thereby providing storage of information that may be accessed abroad.

Re Claim 23: The AAPA discloses that multiple pressure vessels may be used (Reid, W., "Device Enhances Performances for Local Athletes," Item #2 of IDS filed 04/08/2006, Page 1).

However, the AAPA does not specifically disclose the master controller capable of making the stored data available to a second kiosk controller.

Butler discloses that the storage and retrieval system can include online databases, wherein a program accesses a treatment record database including information regarding the history of a patient and procedures.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the master controller capable of making the stored data available to a second kiosk controller, thereby providing a second kiosk, or any kiosk, access to the online database holding

Art Unit: 3700

stored data, permitting the operator to find information regarding the patient or treatment profile.

Through using the Internet or any other network, data is able to be shared easily and not confined to a local kiosk.

Re Claim 24: Note that claim 24 includes limitations of making available to a user the system of claim 10, and allowing the user to pay for a session in the system via an entry of payment information relating to the user into the kiosk controller.

The AAPA inherently discloses making a system for cyclic variations in altitude conditioning available to a user.

However, it is not specifically disclosed how the user of the system pays for services.

Examiner takes OFFICIAL NOTICE that it is well known in the art to provide payment methods to a system through a controlling kiosk or on the system through bill receptors, change receptors, magnetic strips, smart cards, radio frequency, keypad entry of identification, keypad entry of credit information, etc.

Re Claim 25: The AAPA does not specifically disclose downloading data from the kiosk controller to the master controller, wherein the data relates to the user and was previously entered and stored on the kiosk controller.

Butler discloses that the controllers form a storage and retrieval system, including local and remote systems, for storing and retrieving information relating to the user (Paragraphs 120-122).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to download data to the master controller, creating a centralized database of user information.

Art Unit: 3700

Re Claim 26: The limitations of claim 26 have been discussed with regard to claim 21.

Re Claims 27-28: The limitations of claims 27-28 have been discussed with regard to claim 23 above.

Re Claim 29: The AAPA discloses requiring a user to successfully complete a set up program in order to ensure that the user is capable of safely completing a regular session of cyclic variations in altitude conditioning (“Introducing the CVAC Process: How to Get Started”, Item #5 of IDS filed 12/10/2003).

Re Claim 30: The AAPA does not specifically disclose accessing data related to a user from the kiosk controller or master controller in order to determine a suitable program for the user based upon the user’s history of use.

Butler discloses accessing data related to a user from the kiosk controller or master controller to determine a suitable program for the user based on the user’s history of use (Paragraph 121).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to access data related to a user’s history to determine a suitable program for the user, thereby determining and providing the most effective program adapted specifically for the user.

Re Claims 31-33: The limitations of claims 31-33 have been discussed above with regard to claims 3-5.

Art Unit: 3700

Re Claims 34-35: The limitation of enabling the user to successfully complete a set-up session in a pressure vessel has been discussed with regard to claim 29. The limitation of enabling the user to undergo rapid transitions between simulated altitude in the pressure vessel according to cycles determined by a program are disclosed by the AAPA (CVAC). The limitation of using a user sensor to measure a parameter of the user's body condition and selecting or altering the program based on the measured parameter has been discussed with regard to at least claims 7-9.

The AAPA additionally discloses that the cyclic variation in altitude conditioning program is tailored to an individual's body type ("Introducing CVAC: What is CVAC", Item #4 of IDS filed 12/10/2003).

However, the AAPA does not specifically disclose body type categories and selecting a program based on the category.

Butler discloses that programs are designed to be specific to certain treatment profiles, based on the user's data (Paragraphs 121-122).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to classify users into categories (profiles) such that specific treatments based on the user's data can be safely used.

Re Claims 36-39: The limitations of providing payment on the on-board interface or kiosk have been discussed above with regard to claim 24.

Art Unit: 3700

8. Claims 2-5 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the AAPA in view of Butler, as applied to claims 1 and 6-10 above, and further in view of Galerne (US Patent No. 4,227,524).

Re Claims 2-5: Claims 2-5 include an on-board interface and user sensor performing the limitations of claims 6-9, already discussed above, wherein the on-board interface of claims 2-5 essentially replace the external controller of claims 6-9.

The AAPA discloses an on-board interface (Applicant's Remarks, 03/03/2008, Page 12).

However, the AAPA does not specifically disclose the on-board interface selecting and altering the cyclic variations in altitude conditioning program.

Galerne discloses a pressure chamber system wherein controls for regulating the system may be placed inside and outside the vessel (Col. 16, Lines 36-42).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the on-board interface be capable of monitoring readings from the user sensor to determine whether a measured parameter of a user's body condition is at a level sufficient enough to warrant a modification of a predetermined program regulating cyclic variations in altitude conditioning, thereby achieving the predictable result of providing a user of the system control of the system while using the system.

Re Claims 11-14: Note that claims 11-14, dependent on claim 10, include limitations found in claims 2-5, dependent on claim 1, each of which have been discussed above.

Art Unit: 3700

Response to Arguments

9. Applicant's arguments filed 03/03/2008 have been fully considered but they are not persuasive.

Regarding Examiner's official notice, Claim 24: There exists an enumerable number of systems in which an entity wishing to have access to the system is allowed to pay for use of the system through entry of payment information. Such examples include coin operated telephones, card operated telephones, mechanical and electronic slot machines, video arcade machines, rental shopping carts, tanning beds, amusement rides, etc. The method of allowing a user to pay for a session of any activity is not new or novel in and of itself, and can be easily adapted by one of ordinary skill in the art in any art to get paid for a service that is provided. For example, Abelbeck et al. (USPN 6,656,091) discloses an exercise device wherein a user is allowed to pay for a session of use via entry of payment information (Col. 6, Lines 27-40). Additionally, although the Examiner's official notice as used in claim 23 of the previous office action is not used in the present Office Action, Abelbeck et al. disclose a master controller providing user stored data to a plurality of kiosks (Col. 9, Lines 8-22).

Regarding the Applicant's argument that Galerne does not disclose cyclic variations in altitude conditioning programs to vary the pressure of the chamber and a sensor that monitors the subject within the chamber, Galerne was utilized in the previous and present Office Action for teaching the placement of controls in a pressure chamber/vessel.

Art Unit: 3700

Regarding the Applicant's argument that the Examiner's assertion on pages 9-10 that "it is well known in the art to provide users of a service the ability to determine and ensure that the service is safe for the user before the user uses the provided service" is not supported by evidence, the Examiner had cited, in the same paragraph, evidence to support the statement.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Weyergans (US Publication 2002/0007836) discloses using cyclic variations in altitude conditioning.

11. This Office action has an attached requirement for information under 37 CFR 1.105. A complete reply to this Office action must include a complete reply to the attached requirement for information. The time period for reply to the attached requirement coincides with the time period for reply to this Office action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTOR CHEUNG whose telephone number is (571)270-1349. The examiner can normally be reached on Mon-Fri, 9-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3700

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/V. C./

Examiner, Art Unit 3714

/XUAN M. THAI/

Supervisory Patent Examiner, Art Unit 3714

Art Unit: 3700

Requirement for Information

Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

An issue of public use or on sale activity has been raised in this application. In order for the examiner to properly consider patentability of the claimed invention under 35 U.S.C. 102(b), additional information regarding this issue is required as follows: as evidenced by the Applicant's submitted IDS documents (filed 12/10/2003 and 04/28/2006) and the Examiner's cited web-page documents (mailed 07/13/2007), a CVAC system is documented to have been in public use at least one year prior to the 09/11/2003 filing date of the present invention. While the Applicant's Representative had respectfully remarked on specific features of the CVAC system in use "prior to 2002," this present requirement is hereby requesting full disclosure of the features included with the invention/model of the CVAC system in public use as of one year prior to the filing date of the present invention (09/10/2002).

Applicant is reminded that failure to fully reply to this requirement for information will result in a holding of abandonment.

/Robert P Olszewski/

Director, Technology Center 3714